

## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (this “Agreement”) is made and entered into as of the 25<sup>th</sup> day of December 2018 by and among WYZE RADIO, INC., a Georgia corporation (“Seller”), NEW GROUND BROADCASTING, LLC, a Georgia limited liability company (“Buyer”), and FLETCHER HEALD & HILDRETH, P.L.C., a Virginia professional limited liability company, as escrow agent (“Escrow Agent”).

### **RECITALS**

A. Pursuant to that certain Asset Purchase Agreement, dated as of December 25, 2018, by and between Seller and Buyer (the “Purchase Agreement”), Buyer has agreed to acquire from Seller, and Seller has agreed to assign and sell to Buyer, the authorizations issued by the FCC (the “Station Licenses”) and certain related assets used or held for use in connection with broadcast AM station WYZE (FCC Facility ID No. 24145) (the “Station”).

B. It is a condition to the execution of the Purchase Agreement that Buyer, Seller and Escrow Agent execute and deliver this Agreement.

C. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the Purchase Agreement.

### **AGREEMENTS**

In consideration of the recitals and of the respective agreements and covenants contained herein and in the Purchase Agreement, and intending to be legally bound hereby, the parties agree as follows:

### **ARTICLE I** **ESCROW OF DEPOSIT FUNDS**

#### **Section 1.1    Escrow Deposit**

(a) Buyer shall deliver to Escrow Agent the sum of Five Thousand Dollars (\$5,000.00) (the “Escrow Deposit”) no later than January 7, 2019 in the form of immediately available funds, pursuant to the provisions of the Purchase Agreement.

(b) The Escrow Deposit shall be held by Escrow Agent in its IOLTA Trust Account for the benefit of Buyer and Seller as provided in this Agreement. The parties acknowledge that any interest that shall accrue with respect to the Escrow Deposit shall be, as specified by Virginia law, for the benefit of the nonprofit Legal Services Corporation of Virginia and not for the benefit of Seller, Buyer or Agent.

Section 1.2 Appointment of and Acceptance of Appointment as Escrow Agent. The parties hereby appoint Escrow Agent as escrow agent, and Escrow Agent hereby accepts its appointment as escrow agent with respect to the Escrow Deposit and agrees to hold and deliver the Escrow Deposit in accordance with the terms of this Agreement.

Section 1.3 Disbursement of the Escrow Deposit at Closing. At the time and place of the consummation of the Purchase Agreement, and simultaneously with the performance by Buyer and Seller of their respective obligations under the Purchase Agreement, Buyer and Seller jointly shall instruct Escrow Agent in writing either (i) to deliver all or any of the cash portion of the Escrow Deposit to Seller as part of the Purchase Price, or (ii) to deliver the Escrow Deposit to Buyer.

Section 1.4 Entitlement of Seller to Liquidated Damages. In the event that Seller gives Escrow Agent written notice stating that Seller is entitled to the Escrow Deposit as liquidated damages in accordance with the provisions of the Purchase Agreement and that Seller has given notice of such claim to Buyer, then Escrow Agent shall promptly give Buyer a copy of such written notice. At any time on or before the seventh (7th) day after the receipt by Buyer of such notice from Escrow Agent, Buyer may contest Seller's claim to the Escrow Deposit by written notice delivered to Seller and Escrow Agent setting forth the grounds for such dispute. Promptly after the expiration of seven (7) days from the date of Buyer's receipt of such notice from Escrow Agent, if the Escrow Agent shall not have, during such seven-day period, received from Buyer written notice disputing Seller's claim to the Escrow Deposit, Escrow Agent shall deliver the Escrow Deposit to Seller. If Buyer shall give timely written notice to Escrow Agent disputing Seller's claim to the Escrow Deposit, Escrow Agent shall retain the Escrow Deposit until the dispute is resolved in accordance with Section 2.1 hereof.

Section 1.5 Disbursement of the Escrow Amount in Accordance with Joint Instructions. Notwithstanding the above provisions, Escrow Agent, upon receipt of written instructions signed by both Seller and Buyer, shall disburse the Escrow Amount in accordance with such instructions.

## **ARTICLE II**

### **ESCROW AGENT DUTIES AND RIGHTS**

Section 2.1 Rights and Responsibilities of Escrow Agent.

(a) The duties and responsibilities of Escrow Agent shall be limited to those expressly set forth in this Agreement and Escrow Agent shall not be subject to, nor obligated to recognize, any other agreement between, or direction or instruction of, the parties to this Agreement, unless such agreement, direction or instruction is in writing and signed by both Buyer and Seller, and provided to Escrow Agent.

(b) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Escrow Agent will not be required to determine the controversy or to take any action

regarding it. Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Escrow Agent's discretion, Escrow Agent may require. In such event, Escrow Agent will not be liable for interest or damages. Furthermore, Escrow Agent, in its sole discretion, may file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in escrow. All costs, expenses, charges and reasonable attorney fees incurred by Escrow Agent due to the interpleader action shall be paid one-half by Buyer and one-half by Seller, in each case jointly and severally. Upon initiating such action, Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(c) In performing any duties under this Agreement, Escrow Agent shall not be liable to any party for damages, losses, or expenses, except as a result of negligence or willful misconduct on the part of Escrow Agent. Escrow Agent shall not incur any such liability for any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Agreement, that Escrow Agent shall in good faith believe to be genuine, nor will Escrow Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, Escrow Agent may consult with legal counsel in connection with its duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by it in good faith in accordance with the advice of counsel. In the absence of knowledge that any action taken or purported to be taken hereunder is wrongful, Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(d) Escrow Agent, and any successor escrow agent, may resign at any time as escrow agent hereunder by giving at least 30 days' prior written notice to Seller and Buyer. Upon such resignation and the appointment of a successor escrow agent, the resigning Escrow Agent shall be absolved from any and all liability in connection with the exercise of its powers and duties as escrow agent hereunder, except for liability arising in connection with its own negligence or willful misconduct. Upon their receipt of notice of resignation from Escrow Agent, Buyer and Seller shall use reasonable efforts jointly to designate a successor escrow agent. In the event Buyer and Seller do not agree upon a successor escrow agent within 30 days after the receipt of such notice, the Escrow Agent so resigning may petition any court of competent jurisdiction for the appointment of a successor escrow agent or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, Buyer and Seller shall have the right at any time upon not less than 10 days' prior written notice to Escrow Agent to terminate the appointment of Escrow Agent, or any successor, as escrow agent hereunder. Escrow Agent or any successor then serving shall continue to act as escrow agent until a successor is appointed and qualified to act as Escrow Agent.

Section 2.2 Expenses of Escrow Agent. Escrow Agent shall be entitled to reimbursement for its reasonable expenses (including the reasonable fees and disbursements of its legal counsel) actually incurred by it in connection with its duties

under this Agreement (the “Escrow Agent Expenses”). Except as otherwise provided herein, all Escrow Agent Expenses shall be invoiced periodically by Escrow Agent and shall be an equally shared obligation of Buyer and Seller.

Section 2.3 Indemnification of Escrow Agent. The parties and their respective successors and assigns agree, jointly and severally, to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, reasonable legal counsel fees and disbursements that may be imposed on, or incurred by, Escrow Agent in connection with the performance of its duties under this Agreement, including, but not limited to, any litigation arising from this Agreement or involving its subject matter.

Section 2.4 Legal Representation. Buyer acknowledges that Escrow Agent (i.e., Fletcher, Heald & Hildreth P.L.C.) has acted as legal counsel to Seller in connection with the Purchase Agreement and is providing its services under this Agreement at the request of, and as an accommodation to, the parties. Seller and Buyer agree that the provision of services by Escrow Agent under this Agreement does not bar or otherwise limit the ability of Escrow Agent to represent Seller in connection with the Purchase Agreement or the transactions contemplated thereby and consummation thereof, or in any litigation or other proceedings that might arise; *provided*, however, that in the event of such litigation or proceedings, Escrow Agent shall file an action in interpleader in accordance with Section 2.1(b) above.

### **ARTICLE III** **TERMINATION**

This Escrow Agreement shall be terminated (i) upon disbursement of the Escrow Amount by Escrow Agent, or (ii) by written mutual consent signed by all parties. This Escrow Agreement shall not be otherwise terminated.

### **ARTICLE IV** **MISCELLANEOUS**

Section 4.1 Notices. All notices, requests, consents or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given or delivered by any party (a) when received by such party if delivered by hand, (b) on the next business day if being sent by recognized overnight delivery service, or (c) on the fifth business day after being mailed by first-class mail, postage prepaid, and in each case addressed as follows:

- (i) If to Seller: WYZE Radio, Inc.  
1955 Cliff Valley Way NE  
Suite 200  
Atlanta, GA 30329-2437
- (ii) If to Buyer: Ray Neal  
New Ground Broadcasting, LLC  
5930 Creekside Dr.  
Rex, GA 30273

With a copy (which shall not constitute notice) to:  
Michael Richards  
P.O. Box 5842  
Takoma Park, MD 20913

- (iii) If to Escrow Agent:  
  
Fletcher Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209  
Attention: Matthew H. McCormick

Any party by written notice to the other parties pursuant to this Section 3.1 may change the address or the name(s) of person(s) to whom notices or copies thereof shall be directed.

Section 4.2 Assignment. This Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of each of the parties to this Agreement. No rights, obligations or liabilities hereunder shall be assignable by any party without the prior written consent of the other parties, except that Buyer may assign its rights under this Agreement without obtaining the prior written consent of the other parties hereto, to any person or entity to whom, pursuant to the Purchase Agreement, Buyer is permitted to assign all or any portion of its rights under the Purchase Agreement; *provided*, that any such assignee duly executes and delivers an agreement to assume Buyer's obligations under this Agreement.

Section 4.3 Amendment. This Agreement may be amended or modified only by an instrument in writing duly executed by Escrow Agent, Buyer and Seller.

Section 4.4 Waivers. Any waiver by any party hereto of any breach of or failure to comply with any provision of this Agreement by any other party hereto shall be in writing and shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

Section 4.5 Construction. This Agreement shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Virginia without

giving effect to the choice of law provisions thereof. Any proceedings to enforce this Agreement shall be commenced in a court of competent jurisdiction in the County of Arlington, Commonwealth of Virginia. The parties agree not to assert or interpose any defenses, and do hereby waive the same, to the conferral of personal jurisdiction and venue by such court in any suit, action or proceeding. The headings in this Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement. Unless otherwise stated, references to Sections and Exhibits are references to Sections and Exhibits of this Agreement.

Section 4.6 Third Parties. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity other than Buyer, Seller and Agent any rights or remedies under, or by reason of, this Agreement.

Section 4.7 Attorneys Fees/Costs of Suit. If either Buyer or Seller institutes a legal action against the other with respect to the Escrow Deposit, the prevailing party shall be entitled to its attorney's fees and costs of suit, including the cost of any appeals.


Section 4.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed any original and all of which together shall constitute a single instrument.

[Signature page follows]

[Signature page to Escrow Agreement]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first written above.

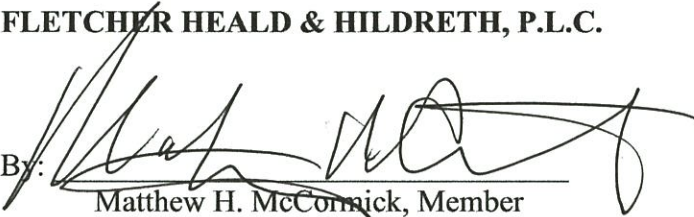
**SELLER: WYZE RADIO, INC.**

By:   
\_\_\_\_\_  
Jacob E. Bogan  
Its Vice-President, Secretary/Treasurer

**BUYER: NEW GROUND BROADCASTING, LLC**

By: \_\_\_\_\_  
Ray Neal  
Managing Member

**ESCROW AGENT: FLETCHER HEALD & HILDRETH, P.L.C.**

By:   
\_\_\_\_\_  
Matthew H. McCormick, Member

[Signature page to Escrow Agreement]

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By: \_\_\_\_\_  
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Its Vice-President, Secretary/Treasurer

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By:  \_\_\_\_\_  
Ray Neal  
Managing Member

**ESCROW AGENT:** **FLETCHER HEALD & HILDRETH, P.L.C.**

By: \_\_\_\_\_  
Matthew H. McCormick, Member